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**Medical Express Ambulance Service, Inc. and International Association of EMTs and Paramedics, SEIU/NAGE. Case 13–CA–43531**

June 8, 2007

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, SCHAMBER,  
AND KIRSANOW

On February 9, 2007, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent filed exceptions, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Medi-

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. We have carefully examined the record and find no basis for reversing the findings. Specifically, we affirm, for the reasons explained by the judge, the judge's decision to credit the testimony of employee Vanessa Engquist, notwithstanding Engquist's false denial, during an August 2006 meeting with Respondent's officials, including Chief Executive Officer Lauren Rubinson, that any manager had ever questioned her about her fellow employees' union activities. Engquist candidly admitted that her denial was untrue, and further testified that she felt intimidated and coerced during that meeting. Given the circumstances of the meeting, we agree with the judge that "Engquist was placed between a rock and a hard place when asked a number of questions about the Union in the presence of Rubinson[,] who controlled her livelihood and job security." The judge also emphasized Engquist's impressive demeanor and her total recall of the facts. Weighed against these considerations, Engquist's false statement, although regrettable, falls short of compelling reversal of the judge's credibility determination under the *Standard Dry Wall* "clear preponderance" standard.

<sup>2</sup> We will substitute a narrow cease-and-desist provision for the broad order recommended by the judge, as we do not find that the Respondent has been shown to have a proclivity to violate the Act or to have engaged in such egregious or widespread misconduct as to demonstrate a general disregard for employees' statutory rights. See *Hickmott Foods*, 242 NLRB 1357 (1979). We will also substitute a new notice to conform to the Order as modified.

cal Express Ambulance Service, Inc., Skokie, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(d).

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. June 8, 2007

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

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Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

**APPENDIX**

**NOTICE TO EMPLOYEES**

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT ask our employees to report on the union activities of other employees.

WE WILL NOT promise benefits to employees in return for information about the union activities of other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

MEDICAL EXPRESS AMBULANCE SERVICE,  
INC.

Brigid Barnicle, Esq. and Christina Lopez, Esq., for the Gen-

eral Counsel.

Joshua D. Holleb, Esq., of Highland Park, Illinois, for the Respondent-Employer.

## DECISION

### STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on November 29, 2006, in Chicago, Illinois, pursuant to a complaint and notice of hearing in the subject case (complaint) issued on October 12, 2006, by the Regional Director for Region 13 of the National Labor Relations Board (the Board). The underlying charge and amended charge were filed in August 2006,<sup>1</sup> by International Association of EMTs and Paramedics, SEIU/NAGE (the Charging Party or Union) alleging that Medical Express Ambulance Service, Inc. (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

### Issues

The complaint alleges that the Respondent engaged in independent violations of Section 8(a)(1) of the Act including interrogating employees about their union activities, soliciting employees to report on the union activities of other employees, and promising benefits to employees if they provided information on the union activities of other employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent is a corporation engaged in the business of providing ambulance and medicar services in Skokie, Illinois, where in the past 12 months it purchased and received at its facility goods valued in excess of \$50,000 from points located outside the State of Illinois. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. The 8(a)(1) Allegations

The Board has held that interrogation is not a per se violation of Section 8(a)(1) of the Act. *Rossmore House*, 269 NLRB 1176, (1984), affd. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In determining whether an interrogation is unlawful, the Board examines whether, under all the circumstances the questioning reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House*, 269 NLRB at 1177–1178. *Emery Worldwide*, 309 NLRB

185, 186 (1992). Under the totality of circumstances approach, the Board examines factors such as whether the interrogated employee is an open and active union supporter, the background of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. *Rossmore House*, supra at 1178 fn. 20; *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964); *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985).

#### 1. Allegations concerning Lauren Robinson

##### a. Facts

The Union commenced an organizing campaign in late May and early June 2006. The Respondent learned of the campaign around that time and on June 12, Respondent's Chief Executive Officer Lauren Robinson, issued a memorandum to all employees urging them not to select the Union as their collective-bargaining representative (GC Exh. 2).

The General Counsel called two witnesses to testify about the allegations alleged in the complaint. The Respondent also called two witnesses to respond to those allegations.

Employee Robert Castro, an emergency medical technician (EMT), testified that he has worked at the Respondent for approximately 2 years and reports directly to Human Resource Manager Catherine Aitken, who in turn is supervised by Robinson. Castro stated that while he learned about the organizing campaign from coworkers in June 2006, he was not actively engaged therein and was not an active or open supporter of the Union. Likewise, he indicated that he did not distribute union campaign literature nor did he wear any union insignia to work.

Castro testified that when his shift ended around 8:30 p.m. on or about July 13, and while he was completing his required paper work in the operations office, he engaged Operations Supervisor Angie Graham in a conversation while she was sitting at her desk. According to Castro, while he was talking with Graham, Robinson pulled him off to the side and they engaged in a conversation in the hallway closer to the operations office than the reception area. He was certain, however, that Graham could not see them talking. During the conversation, Castro asserts that Robinson asked him "Do you know anything about the Union, have you heard anything?" Castro replied no, I have only heard rumors and what not. Castro testified that Robinson then said, "If you know anything, let me know, if you do let me know, you won't regret it."

On cross-examination, Respondent's counsel showed Castro four memoranda to help refresh his recollection of when the conversation occurred with Robinson. Castro, after reviewing the documents, testified that the conversation with Robinson took place on August 3, 1 week before the date of the first memorandum which issued on August 10.

Robinson testified that she had two conversations with Castro where the topic of the Union was discussed. The first conversation took place in August 2006, when Castro went to Robinson's office, and stated that he needed to talk about the Union because he wanted to learn more about it. Robinson informed Castro that the Respondent intended to have a number of employee sessions about the Union and she would

<sup>1</sup> All dates are in 2006 unless otherwise indicated.

inform him when they took place. The second conversation took place after August 2006, when Castro was in the billing office, and Rubinson tapped him on the shoulder and informed him that a meeting about the Union would be held shortly. After the meeting about the Union was held, Rubinson stated that Castro asked her how he should vote and Rubinson told him that she could not tell him how to vote but rather he should make his own decision.

Rubinson denied that she ever had a conversation with Castro outside the operations office and asserts that she never asked him the questions set forth above and alleged in the complaint.

#### *b. Discussion*

I do not credit Castro's testimony for the following reasons. First, Castro was very unsettled as a witness who repeatedly changed his testimony concerning when the alleged meeting occurred, and had great difficulty in remembering when the alleged conversation with Rubinson took place. Indeed, he first testified that the conversation with Rubinson took place during the week of July 10, then that it specifically occurred on July 13, and finally that the conversation took place on August 3. Second, Rubinson credibly testified without contradiction, that Castro did not work on July 10 (Monday), that on July 11 (Tuesday), she was not working in the evening and left work at 6 p.m., that on July 12 (Wednesday), Castro did not work and on July 13 (Thursday), she was at a meeting in the morning and then left the office in the afternoon to catch a flight to Indianapolis at 2:40 p.m.. Rubinson did not return to the Chicago area until July 15 (Saturday), when she went directly to the office to pick up her automobile and left the office around 6 p.m. (R Exh. 3). The Respondent introduced Castro's timecard (R Exh. 2) that confirms Rubinson's testimony including the fact that Castro worked until 10:19 p.m. on July 15 (Saturday). Thus, it was impossible for their paths to cross anytime during the week of July 10 when Castro testified on two separate occasions that the discussion with Rubinson in the hallway took place around 8:30 p.m. Lastly, Rubinson credibly testified that Graham could not have been in the operations office alone at anytime during the week of July 10, as she was an operations supervisor in training and could not have physically been in the office without the presence of an incumbent operations supervisor. In addition, Graham's timecard (R Exh. 3) for that week shows that she was either in training offsite or left the office on the days she was there at 5 p.m. or earlier. Thus, she could not have been in the office at 8:30 p.m. when Castro testified that he engaged Graham in a conversation before meeting with Rubinson.

Likewise, I note that the General Counsel did not call either Castro or Graham as rebuttal witnesses to contradict the un rebutted testimony of Rubinson. Certainly, calling Graham as a witness would have substantially buttressed the General Counsel's case.

For all of the above reasons, I find that the General Counsel did not establish that Rubinson interrogated Castro, solicited him to report the union activities of other employees, or promised him benefits in return for information on the union

activities of other employees on the July 13 date alleged in the complaint or any date during the week of July 10. I also find that Castro gave shifting answers throughout his testimony and was uncertain when the conversation with Rubinson took place. Conversely, Rubinson was precise and certain of when events took place and her testimony in addition to the documentary evidence introduced into the record convinces me that her testimony was truthful. Accordingly, I recommend that the allegations in the complaint regarding Rubinson be dismissed in their entirety.

### 2. Allegations concerning Catherine Aitken

#### *a. Facts*

Employee Vanessa Engquist has been employed as an EMT at the Respondent for approximately 18 months and reports to Aitken. She became aware of the union organizing campaign in or around late May or early June 2006, but was not active in the drive or a known union supporter.

Engquist testified that on or about July 27, Aitken requested that she report to her office. During the one-on-one conversation that lasted about 5 minutes, Engquist asserts that Aitken asked her if "I knew who was involved in organizing the Union." Engquist replied, "I do know who is involved but I will not tell you because I wasn't a rat." Engquist testified that Aitken offered a raise to \$10.50 per hour if she would inform Aitken of which employees were involved in organizing the Union. Engquist replied, "I deserve \$10.50 per hour because of my experience but if you want to fire me for not telling you who is involved that was fine." Aitken said, "I will not fire you because it is against the law." Aitken then informed Engquist that she had three other people on the payroll that she could get the information from. Engquist replied, "Thanks for making me feel like a door mat." Aitken said, "I thought you needed the money and that is why I asked you for the information." Engquist testified that she told her Mother about the conversation with Aitken as she was upset about what was said.

In August 2006, Engquist was asked to attend a meeting with her operations supervisor and Rubinson. No other employee was in the room. The Respondent gave assurances to Engquist that no reprisals would be taken against her and asked if she would voluntarily respond to several questions.<sup>2</sup> Engquist agreed to answer some questions and told Rubinson that no one in management ever asked her questions about the Union. Engquist testified that she lied to Rubinson during the meeting as she was intimidated and felt coerced in the presence of both supervisors specifically Rubinson who controlled her job and livelihood.<sup>3</sup>

Aitken has been the human resource manager at the Respondent for 7 years and personally hired Engquist.

Aitken testified that she had two conversations with Engquist when the subject of the Union was discussed. The

<sup>2</sup> It appears that the Respondent gave lawful *Johnnies Poultry Co.*, 146 NLRB 770 (1964), safeguards to Engquist.

<sup>3</sup> Rubinson held the positions of president and chief executive officer in addition to holding 100-percent ownership in the Respondent.

first conversation occurred sometime between August 25 and early September 2006 in her office. According to Aitken, Engquist was just returning to work after being on light duty due to suffering an earlier injury and asked Aitken whether she had a minute to talk. Engquist informed Aitken that she was concerned that her coworker Jeff Schultz had requested that she prepare a statement about her injury during the timeperiod that they were working together. Engquist explained to Aitken that she feared the information would get out because Schultz was involved in trying to organize the Union.

The second conversation took place on November 1 in Aitken's office. Aitken testified that Engquist informed her that she received a strange telephone call on her voice mail and it upset her. After some additional discussion, Engquist told Aitken that the caller left a message that Robinson was paying people to change sides with the Union. Aitken disabused Engquist of this assertion and asked her if she wanted Aitken to get involved. Engquist told Aitken that she could handle the matter and said she called the person back and threatened them. Aitken suggested to Engquist that was not the proper way to handle the matter.

Aitken categorically denied that she engaged in a conversation with Engquist on or about July 27, wherein she interrogated her about the union activities of other employees, solicited her to report on the union activities of other employees, or offered her a raise if she would provide information on which employees were involved in the union organizing campaign.

#### *b. Discussion*

There is no dispute that Aitken was aware that the Union commenced organizing at the Respondent in June 2006. Indeed, Robinson issued a memorandum to all employees dated June 12 to this effect. According to Engquist, the conversation with Aitken occurred around July 27, several days before the Union filed its representation petition on August 1 (GC Exh. 3).

The above recitation reflects a complete credibility dispute between Aitken and Engquist. Thus, it is necessary to resolve this difference based on my observation of the demeanor of each witness during the course of the proceeding.

I was quite impressed with Engquist's demeanor and her total recall of the facts. Her testimony had a ring of truth to it. I also note that after the completion of Engquist's testimony on direct examination, counsel for the Respondent requested and was provided her pretrial affidavit that was executed on August 14, a period of time shortly after the conversation occurred on or about July 27. Significantly, that affidavit was not introduced into evidence, as the Respondent did with Castro's pretrial statement to establish any inconsistent statements. Thus, I conclude that Engquist's record testimony was fully consistent with her pretrial affidavit given to the Board agent. Moreover, it convinces me that Engquist's statement that she told her mother about the conversation shortly after it occurred due to her being upset adds credulity to her testimony.

In regard to Aitken's testimony concerning the two con-

versations that she had with Engquist, much of it was rambling and disjointed. I conclude that Aitken, as human resource manager, was interested in learning who was involved in the union organizing and selected employees who did not appear to be active in the campaign in order to obtain information on which employees were the leading union adherents.

Likewise, I discount the Respondent's attempt to discredit Engquist's testimony when it showed that Engquist lied about her earlier conversation with Aitken when she was called to a meeting with Robinson and her operations supervisor in August 2006, and denied that she previously talked with any management official about the Union. Engquist credibly testified that she was scared and intimidated to be confronted by the owner and another manager without the presence of any other employee or someone else to assist her. I am of the opinion that Engquist was placed between a rock and a hard place when asked a number of questions about the Union in the presence of Robinson who controlled her livelihood and job security. Thus, I find in these circumstances, that it was natural for Engquist to deny that she had any earlier conversations with any management official about the Union.

Accordingly, and particularly noting Engquist's firm conviction on the witness stand in answering all question in a direct and forthright manner, I find that Aitken did engage in the conduct alleged in the complaint. Therefore, I recommend that the Board find that the Respondent engaged in conduct violative of Section 8(a)(1) of the Act. See *Beverly Health Rehabilitation Services*, 339 NLRB 1243, 1249, (2003), *Hialeah Hospital*, 343 NLRB 391, 392 (2004).

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) of the Act when it interrogated an employee about the union activities of other employees, solicited an employee to report on the union activities of other employees and promised benefits to an employee if she provided information about the union activities of other employees.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent, Medical Express Ambulance Service, Inc. Skokie, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Interrogating an employee about the union activities of other employees.
  - (b) Soliciting an employee to report on the union activities of other employees.
  - (c) Promising benefits to an employee in return for information about the union activities of other employees.
  - (d) . In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Skokie, Illinois, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 27, 2006.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible

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<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 9, 2007

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT ask our employees to report on the union activities of other employees.

WE WILL NOT promise benefits to employees in return for information about the union activities of other employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their Section 7 rights protected by the Act.

MEDICAL EXPRESS AMBULANCE SERVICE, INC.